

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

C.W.P. No.15253 of 2006

Date of Decision: 22.9.2006

Zile Singh

.....Petitioner

Versus

State of Haryana and others

....Respondents.

CORAM : HON'BLE MR.JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S.BEDI

Present:- Mr. S.N.Yadav, Advocate for the petitioner.

M.M.Kumar,J.

The only issue raised in the instant petition is whether the petitioner is entitled to payment of arrears from 11.8.2001 to 22.12.2002. The petitioner had appeared for appointment to the post Constable in 2001 under Roll No.2412. When he was not selected, he filed CWP No.5857 of 2001 which was disposed of by a Division Bench of this Court on 23.4.2002 with the observation that if the petitioner makes a detailed representation then the authorities were to pass an appropriate order thereon within specified period. Accordingly, the petitioner filed a representation and on 30.9.2002, the competent authority found that five grace marks which were required to be given to the petitioner had not been given. By adding five marks the petitioner had acquired a place in the select list. The petitioner was given appointment on 22.12.2002 w.e.f. 11.8.2001, the date persons

lower in order of merit than the petitioner were given the appointment. The petitioner made a representation that all financial benefits from 11.8.2001 to 22.12.2002 be also given to him as he had suffered on account of the fault committed by the department. The afore-mentioned representation has been rejected vide order dated 25.5.2006, the operative part of which reads as under:

“The representation of Constable Zile Singh No.1540/GGN has been considered. The appointing authority has clearly mentioned in the order that the petitioner would be entitled for seniority only and no pay and allowances shall be paid for the period from 11.8.2001 to 22.12.2002, as the petitioner has not worked during this period. The undersigned do not find any justification to give pay and allowances for the period the representationist has not worked in the department.

3.Hence, in view of the above facts and circumstances the representation is rejected being devoid of any merit.”

After hearing learned counsel, we are of the considered view that the impugned order does not suffer from any legal infirmity. We find that the principle of 'no work no pay' has been correctly applied by the authority concerned. The petitioner had appeared in the recruitment test but on account of over sight or inadvertent mistake he was not awarded five

marks according to the criteria. It is appropriate to mention that five marks were required to be awarded to him on account of the fact that he had worked as a constable earlier and his selection along with others was quashed by the Division Bench of this Court. The order passed by the Division Bench was upheld by the Hon'ble Supreme Court on 17.1.2001 in C.A.Nos.15034-36 of 1996 (Suresh Kumar V. State of Haryana). It was according to the direction issued by the Supreme Court that the candidates selected earlier were to be awarded five marks. When the posts were advertised the petitioner was not selected. He filed C.W.P. No.5857 of 2001, which was disposed of by this court and a direction was issued to the respondents to consider his representation. It was found that the petitioner was not awarded five marks and by adding five marks he had acquired a place in the selection list. Accordingly, he was given an appointment on 22.12.2002 w.e.f. 11.8.2001. It is thus evident that he did not work from 11.8.2001 to 22.12.2002.

It is now well settled that even in cases where an employee is held entitled to reinstatement the question regarding payment of back wages is independent of the question in respect of entitlement to reinstatement and a number of factors are taken into consideration, keeping in view the principles of justice, equity and good conscious, as has been held by the Supreme Court in U.P. SRTC Ltd. vs. Sarada Prasad Misra and another (2006) 9SCC 733. However, in the cases pertaining to appointment as against reinstatement, the general principle followed is 'no work no pay'. Although, the appointment is given with a retrospective date and benefit of refixtation of pay is also granted. Therefore, we do not find any legal

infirmity in the impugned order.

Accordingly, the writ petition fails and the same is dismissed.

(M.M.KUMAR)
JUDGE

Sept 22,2006.
okg/ Reema.

(M.M.S.BEDI)
JUDGE